



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,219	04/24/2001	Robert Mann	6311-9	6403

21890 7590 01/26/2005

PROSKAUER ROSE LLP  
PATENT DEPARTMENT  
1585 BROADWAY  
NEW YORK, NY 10036-8299

EXAMINER

COLON, CATHERINE M

ART UNIT	PAPER NUMBER
----------	--------------

3623

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/841,219

**Applicant(s)**

MANN ET AL.

**Examiner**

C. Michelle Colon

**Art Unit**

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on April 24, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The following is a Non-Final Office Action in response to the communication received on April 24, 2001. Claims 1-54 are now pending in this application.

#### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 5, 6, 9 and 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Bracken et al., "High-tech 360."

As per claim 1, Bracken et al. discloses a computer-implemented method for providing performance measurement of an evaluatee, wherein the method comprises:

accessing an online performance measurement program on a distributed network access device (paragraphs 2 and 5; The system consists of an Internet-based 360 degree performance evaluation survey, which users complete online.);

electing an online 90 degree or 360 degree evaluation (paragraphs 3 and 4; Users are given instructions for selecting and completing the online evaluation.);

completing an online self evaluation (paragraphs 3 and 4; Users complete self evaluations as well as evaluations on their boss, peers and their staff.);

completing the elected evaluation (paragraphs 3 and 4; Users complete self evaluations as well as evaluations on their boss, peers and their staff.);

aggregating the results of the evaluations (paragraph 4; Results of the evaluations are collected and aggregated into feedback reports.); and

sending feedback relating to the evaluation to the evaluatee (paragraphs 15 and 16; Evaluatees are provided feedback reports relating to their evaluation.).

As per claim 2, Bracken et al. discloses the method of claim 1 additionally comprising setting objectives for an evaluation period and recording the objectives in the computer implementing the system (paragraph 16; The system helps participants set development objectives and monitors their progress during an evaluation period.).

As per claim 5, Bracken et al. discloses the method of claim 1 additionally comprising linking compensation processes to the evaluation (paragraph 29; The system associates the evaluations with pay increases and promotions.).

As per claim 6, Bracken et al. discloses the method of claim 1 additionally comprising linking promotion processes to the evaluation (paragraph 29; The system associates the evaluations with pay increases and promotions.).

As per claim 9, Bracken et al. discloses the method of claim 1 additionally comprising selecting evaluators from a list of appropriate personnel relative to the evaluatee (paragraph 3; Ratees can create a list of raters to conduct their evaluation.).

Claims 12-20 recite substantially similar limitations as claims 1, 2, 5, 6 and 9 above. Therefore, claims 12-20 are rejected on the same basis as claims 1, 2, 5, 6 and 9 above.

4. Claims 35-54 are rejected under 35 U.S.C. 102(e) as being anticipated by Fethe (U.S. 5,926,794).

As per claim 35, Fethe discloses a system for providing an evaluation, comprising:

a plurality of assessment criteria (col. 4, lines 31-32; col. 5, lines 44-51; The system evaluates based on various criteria.);

a ratings scale for rating an evaluatee's performance with respect to said plurality of assessment criteria (Figure 5; Users slide their ratings along a scale on a visual ratings interface.);

an assessment engine for storing and presenting said rating information (col. 6, lines 31-34; col. 8, lines 54-58; The system uses a database to store rating information.); and

a configuration tool for modifying said plurality of assessment criteria and said ratings scale (col. 4, lines 29-35 and 47-50; Administrators can set up the assessment criteria and ratings scale and make changes through the administrator module.).

As per claim 36, Fethe discloses the system of claim 35, wherein said plurality of assessment criteria includes detailed performance criteria for assessment and said

configuration tool modifies said detailed performance criteria (col. 4, lines 31-35 and 47-50; col. 5, lines 44-51; The system evaluates based on various performance criteria.).

As per claims 37-40, Fethe discloses the system of claim 35, wherein said evaluatee is an employee, vendor, product, or service (col. 9, lines 3-11).

Claims 41-54 recite substantially similar subject matter as claims 35-40 above. Therefore, claims 41-54 are rejected on the same basis as claims 35-40 above..

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3, 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bracken et al., "High-tech 360" as applied above.

As per claim 3, Bracken et al. does not expressly disclose the method of claim 1 additionally comprising applying a digital signature to a report containing the aggregated results. However, Bracken et al. does disclose the importance of ensuring full security for the evaluation system, including the use of ID's and passwords (paragraphs 3, 8 and 23). It is old and well known that a digital signature is a way to maintain data security and integrity. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Bracken et al. to use digital signatures on the

feedback reports since doing so would enhance the security of the system by ensuring that the reports have been processed by authorized people.

As per claims 4 and 7, Bracken et al. does not expressly disclose the method of claim 1 additionally comprising listing on a to do list outstanding tasks relating to completion of the performance measurement; or listing completed tasks. However, Bracken et al. does disclose monitoring the progress of an individual during a performance evaluation period (paragraph 16). It is old and well known that measuring the performance of an individual in a business setting includes monitoring the completion of tasks. Thus, at the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Bracken et al. to list outstanding tasks or completed tasks related to performance measurement because doing so provides raters with detailed performance data on ratees, thus giving raters information to conduct thorough and accurate evaluations.

As per claim 8, Bracken et al. does not expressly disclose the method of claim 1 wherein a interaction with the computer system implementing the performance measurement can be accomplished in multiple languages. However, Bracken et al. does disclose the benefit of having the performance evaluation system accessed over the Internet is the transnational and global accessibility to participants (paragraph 25). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Bracken et al. to implement the evaluation system in multiple languages since Bracken et al. touts its system's global accessibility, applying multiple

languages would enhance the system's reach to its participants in offices around the globe.

7. Claims 10, 11 and 21-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bracken et al., "High-tech 360" as applied above and Fethe (U.S. 5,926,794).

As per claims 10 and 11, Bracken et al. does not expressly disclose the method of claim 1 wherein the evaluations include contribution and competency categories; or wherein the competency category comprises detail ratings. Fethe discloses contribution and competency categories used for rating individuals (col. 5, lines 44-55; Figure 5; The system includes categories such as results, decisions, self-management, problem-solving and interaction with others.). At the time of the invention, it would have been obvious for the performance evaluation system of Bracken et al. to use the detailed categories as disclosed by Fethe because such categories allow raters to focus on specific criteria with which to evaluate individuals, thus enhancing the thoroughness and accuracy of the performance evaluations.

As per claims 21-23, Bracken et al. discloses a system for providing a performance evaluation, comprising:

an interface module, said interface module presenting to an evaluator an evaluation form, said evaluator inputting evaluation information regarding an evaluatee into said evaluation form (paragraphs 2 and 5; The system consists of an Internet-based 360 degree performance evaluation survey, which users complete online.); and



a feedback generator retrieving said evaluation information and placing said evaluation information into a feedback form (paragraph 4; The system collects evaluation data and creates feedback forms.);

wherein said interface module presents feedback form to said evaluatee (paragraphs 4, 15 and 16; Evaluatees are provided feedback reports relating to their evaluation.).

Bracken et al. does not expressly disclose presenting the evaluations in multiple languages. However, Bracken et al. does disclose the benefit of having the performance evaluation system accessed over the Internet is the transnational and global accessibility to participants (paragraph 25). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the system of Bracken et al. to implement the evaluation system in multiple languages since Bracken et al. touts its system's global accessibility, applying multiple languages would enhance the system's reach to its participants in offices around the globe.

Bracken et al. also does not expressly disclose an evaluation data database for storing the evaluation information. However, Bracken et al. does disclose a human resources database for storing employee data such as names, department, location, etc. (paragraph 26). Fethe discloses an evaluation database for storing evaluation information (col. 6, lines 31-34; col. 8, lines 54-58). At the time of the invention, it would have been obvious to a person of ordinary skill in the art for the evaluation system of Bracken et al. to utilize an evaluation database as disclosed by Fethe since Bracken et al. already utilizes a database for storing general employee information and since

Art Unit: 3623

Bracken et al. supports the use of databases to streamline and make more efficient the evaluation process (Bracken et al., paragraph 26). Thus, an evaluation database would further add to the efficiency and accuracy promoted by the system of Bracken et al.

As per claims 24-27, Bracken et al. discloses the system of claim 21, further comprising monitoring said evaluation information and generating status information regarding said performance evaluation, wherein the status information is to do information, completion data information and is communicated via email (paragraphs 4, 6 and 9; The system automatically distributes and collects evaluations to be completed. Supervisors are notified by email if raters haven't completed the evaluations within a certain time, wherein the to do item is to complete the evaluation.). Bracken et al. does not expressly disclose an evaluation data database, the analysis of which is provided above.

Claims 28-34 recite substantially similar subject matter to claims 21-27 above. Therefore, claims 28-34 are rejected on the same basis as claims 21-27 above.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Powers et al. (U.S. 6,615,182) discloses a performance evaluation system;
- Jansen et al. "Multi-rater feedback methods: personal and organizational implications," *Journal of Managerial Psychology*, 1999 [retrieved from Proquest], discusses a performance evaluation system;
- Meyer, Gary. "360 On the Net: A computer toolkit for multirater performance feedback," *HRMagazine*, Oct 1998 [retrieved from Proquest], discusses a performance evaluation system;
- Meade, Jim. "Visual 360: A performance appraisal system that's fun," *HRMagazine*, Jul 1999 [retrieved from Proquest], discusses a performance evaluation system; and
- Huet-Cox et al. "Get the most from 360-degree feedback: Put it on the Internet," *HRMagazine*, May 1999 [retrieved from Proquest], discusses an Internet-based performance evaluation system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Michelle Colon whose telephone number is 703-605-4251. The examiner can normally be reached Monday – Friday from 8:30am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz, can be reached at 703-305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

***Washington D.C. 20231***

or faxed to:

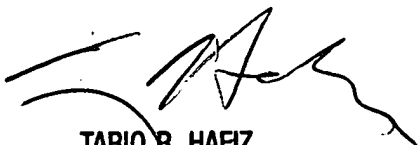
703-872-9306 [Official Communications; including After Final  
communications labeled "Box AF"]

703-746-7202 [For status inquiries, draft communication, labeled  
"Proposed" or "Draft"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA 7<sup>th</sup> floor receptionist.

  
cmc

January 13, 2005

  
**TARIQ R. HAFIZ**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 3600**